

1 *[Counsel Listed on Signature Page]*

2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5

6 IN RE CAPACITORS ANTITRUST LITIGATION

Master File No. 3:17-md-02801-JD

7 THIS DOCUMENT RELATES TO:

JOINT STATUS REPORT REGARDING
CONCURRENT EXPERT “HOT TUB”

8 *The AASI Beneficiaries’ Trust, by and Through*
9 *Kenneth A. Welt, Liquidating Trustee, v. AVX*
10 *Corp. et al.*, Case No. 3:17-cv-03472

11 *Avnet, Inc. v. Hitachi Chemical Co., Ltd., et*
12 *al.*, Case No. 17-cv-7046

13 *Benchmark Electronics, Inc. et al. v.*
14 *AVX Corp. et al.*, Case No. 17-cv-7047-JD

15 *Jaco Electronics, Inc. et al. v. Nippon Chemi-Con*
16 *Corporation, et al.*, Case No. 3:19-cv-1902-JD

17 *Arrow Electronics, Inc. v. ELNA Co., Ltd. et al.*,
18 No. 3:18-cv-02657-JD

19 *Flextronics International USA, Inc.’s Individual*
20 *Action*, Case No. 3:14-cv-03264-JD

21 I. INTRODUCTION

22 At the April 17, 2020 status conference, the Court advised the parties that it would hold a
23 concurrent expert “hot tub” proceeding (the “Hot Tub”) and directed the parties to “meet and confer
24 and submit joint proposals for the structure and format of the proceedings, including the number of
25 proceedings that should be held and proposed dates.”

26 Counsel have done so and have reached an agreement on a proposed date and format. The
27 parties therefore jointly submit this status report setting forth their proposed Hot Tub schedule and
28 format, and respectfully request that the Court enter an order setting the Hot Tub for August 11, 2020.

II. TIMING AND FORMAT OF HOT TUB

During the April 17 status conference, the Court advised the parties of its intention to hold a Hot Tub in respect of Defendants' *Daubert* Motion concerning DAPs' expert, Dr. Leslie Marx and DAPs' *Daubert* Motions in respect of Nichicon's expert, Dr. Stephen Prowse, and Hitachi Chemical's expert, Dr. Michael Williams. The Court also suggested either August 4, 2020 or August 11, 2020 as the date(s) of the Hot Tub.

The parties agree that the arguments raised in DAPs' *Daubert* Motions of Dr. Prowse [D.E. 625] and Dr. Williams [D.E. 630] are not appropriate for a Hot Tub proceeding because those issues relate to legal rather than econometric issues. DAPs believe that the issues raised in Sections I & II of their *Daubert* motion with regard to Dr. Williams have been decided by the Court as part of the Direct Purchaser Class pretrial proceedings. *See* D.E. 1140 (Ruling on Defendants' Motion in Limine No. 1). Hitachi Chemical disagrees and does not believe the Court has decided any issue as to Dr. Williams' proffered testimony, which contains properly admissible expert rebuttal testimony responsive to Dr. Marx's purported economic conclusions.

The parties further agree that Section C of Defendants' *Daubert* motion [D.E. 652] also should not be part of the Hot Tub of Dr. Marx, as it too relates strictly to legal issues. The parties agree that these legal issues can be decided on the papers or by oral argument if the Court deems it to be helpful.

With respect to the timing of the Hot Tub for Dr. Marx, the parties respectfully request (if possible) that it be scheduled on August 11, 2020.

Consistent with intention expressed by the Court, the parties all would prefer that the Hot Tub take place in person. However, given the effects of the COVID-19 pandemic and General Order 72-3 of the Northern District of California, they agree that to avoid any delay, if the hearing cannot proceed in person, the parties will be prepared to proceed on August 11, 2020 via Zoom or similar videoconference technology.

Finally, as directed by the Court, Dr. Marx, Dr. Haider, and Dr. Prowse shall meet and confer to prepare a joint statement that lists the top five issues of disagreement by descending order of importance. This joint submission shall be filed by July 17, 2020.

1 Dated: June 19, 2020

2 /s/ Robert W. Turken

3 Robert W. Turken

4 **BILZIN SUMBERG BAENA PRICE**
5 **& AXELROD LLP**

6 Robert W. Turken (*pro hac vice*)

7 Scott N. Wagner (*pro hac vice*)

8 Lori P. Lustrin (*pro hac vice*)

9 Shalia M. Sakona (*pro hac vice*)

10 Jerry R. Goldsmith (*pro hac vice*)

11 Ilana A. Drescher (*pro hac vice*)

12 1450 Brickell Ave., Suite 2300

13 Miami, Florida 33131-3456

14 Telephone: (305) 374-7580

15 Facsimile: (305) 374-7593

16 *Attorneys for Plaintiffs Avnet, Inc.; The AASI*
17 *Beneficiaries' Trust, by and Through*
18 *Kenneth A. Welt, Liquidating Trustee; Jaco*
19 *Electronics, Inc.; and Benchmark*
20 *Electronics, Inc.*

21 /s/Meredith Schultz

22 Stuart H. Singer (*pro hac vice*)

23 Meredith Schultz (*pro hac vice*)

24 **BOIES SCHILLER FLEXNER LLP**

25 401 East Las Olas Blvd.

26 Suite 1200

27 Fort Lauderdale, FL 33301

28 Telephone: (954) 356-0011

Facsimile: (954) 356-0022

Email: ssinger@bsflp.com

Email: mschultz@bsflp.com

Philip J. Iovieno

Anne M. Nardacci

BOIES SCHILLER FLEXNER LLP

30 South Pearl Street, 11th Floor

Albany, NY 12207

Telephone: (518) 434-0600

Facsimile: (518) 434-0665

Kyle Smith

BOIES SCHILLER FLEXNER LLP

1401 New York Ave., NW

Washington, DC 20005

Telephone: (202) 237-2727

Attorneys for Plaintiff Arrow
Electronics, Inc.

/s/Charles E. Tompkins

Charles E. Tompkins (*pro hac vice*)

WILLIAMS MONTGOMERY & JOHN
LTD.

1200 18th Street NW, Suite 325

Washington, D.C. 20036

Telephone: (202) 791-9951

Facsimile: (312) 630-8586

Email: cet@willmont.com

Paul J. Ripp (*pro hac vice*)

Ashley Hyun-Jeong Kim (*pro hac vice*)

WILLIAMS MONTGOMERY & JOHN
LTD.

233 S. Wacker Drive, Suite 6800

Chicago, IL 60606

Telephone: (312) 443-3200

Facsimile: (312) 630-8500

Email: pjr@willmont.com

ahk@willmont.com

Whitney E. Street (State Bar No. 223870)

BLOCK & LEVITON LLP

100 Pine Street, Suite 1250

San Francisco, CA 94111

Telephone: (415) 968-1852

Facsimile: (617) 507-6020

Email: wstreet@blockesq.com

Counsel for Plaintiff Flextronics International USA,
Inc.

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

s/ Jonathan M. Jacobson

Jonathan M. Jacobson
Chul Pak (admitted *pro hac vice*)
Jeffrey C. Bank (admitted *pro hac vice*)
Justin A. Cohen (admitted *pro hac vice*)
1301 Avenue of the Americas, 40th Floor
New York, New York 10019
Telephone: (212) 497-7758
Facsimile: (212) 999-5899
jjacobson@wsgr.com
cpak@wsgr.com
jbank@wsgr.com
jcohen@wsgr.com

Jeff VanHooreweghe (Bar No. 313371)
One Market Plaza
Spear Tower, Suite 3300
San Francisco, California 94105
Telephone: (415) 947-2046
Facsimile: (415) 947-2099
jvanhooreweghe@wsgr.com

*Counsel for Defendants Hitachi Chemical Co.,
Ltd., Hitachi AIC Inc., and Hitachi Chemical Co.
America, Ltd.*

K&L GATES LLP

s/ Michael E. Martinez

Michael E. Martinez
(admitted *pro hac vice*)
Scott M. Mendel (admitted *pro hac vice*)
Steven M. Kowal (admitted *pro hac vice*)
Lauren N. Donahue (admitted *pro hac vice*)
Brian J. Smith (admitted *pro hac vice*)
70 West Madison Street, Suite 3300
Chicago, Illinois 60602
Telephone: (312) 372-1121
Facsimile: (312) 827-8000
michael.martinez@klgates.com
scott.mendel@klgates.com
lauren.donahue@klgates.com
brian.j.smith@klgates.com

Daniel W. Fox (Bar No. 268757)
4 Embarcadero Center, Suite 1200
San Francisco, California 94111
Telephone: (415) 882-8200
Facsimile: (415) 882-8220
daniel.fox@klgates.com

Philip Van Der Weele
(admitted *pro hac vice*)
One S.W. Columbia Street, Suite 1900
Portland, Oregon 97258
Telephone: (503) 228-3200
Facsimile: (503) 553-6227
Phil.vanderweele@klgates.com

*Counsel for Defendants Nichicon
Corporation and Nichicon (America)
Corporation.*

JONES DAY

s/ Jeffrey A. LeVee

Jeffrey A. LeVee (Bar No. 125863)
Erick P. Enson (Bar No. 204447)
Kelly M. Ozurovich (Bar No. 307563)
555 South Flower Street, Fiftieth Floor
Los Angeles, California 90071
Telephone: (213) 489-3939
Facsimile: (213) 243-2539
jlevee@jonesday.com
epenson@jonesday.com
kozurovich@jonesday.com

*Counsel for Defendants Holy Stone Enterprise
Co., Ltd., Milestone Global Technology, Inc. (d/b/a
HolyStone International), and Vishay Polytech Co.,
Ltd.*

MORRISON & FOERSTER LLP

s/ Bonnie Lau

Bonnie Lau
425 Market Street
San Francisco, California 94105
Telephone: (415) 268-6511
Facsimile: (415) 268-7522
BLau@mofo.com

*Counsel for Defendant Matsuo Electric
Co., Ltd.*

**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**

s/ Charles Rule

Charles "Rick" Rule (admitted *pro hac vice*)
Joseph J. Bial (admitted *pro hac vice*)
2001 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 223-7300
Facsimile: (202) 223-7430
rrule@paulweiss.com
jbial@paulweiss.com

Johan E. Tatoy (admitted *pro hac vice*)
Sara E. Hershman (admitted *pro hac vice*)
1285 Avenue of the Americas
New York, New York 10128
Telephone: (212) 373-3830
Facsimile: (212) 757-3990
jtatoy@paulweiss.com
shershman@paulweiss.com

KAUFHOLD GASKIN LLP

Steven Kaufhold (Bar No. 157195)
388 Market Street, Suite 1300
San Francisco, California 94111
Telephone: (415) 445-4621
Facsimile: (415) 874-1071
skaufhold@kaufholdgaskin.com

*Counsel for Defendants Nippon Chemi-Con
Corporation and United Chemi-Con, Inc.*

**WILMER CUTLER PICKERING
HALE AND DORR LLP**

s/ Heather S. Nyong'o

Heather S. Nyong'o (Bar No. 222202)
One Front Street, Suite 3500
San Francisco, California 94111
Telephone: (628) 235-1000
Facsimile: (628) 235-1001
heather.nyongo@wilmerhale.com
Thomas Mueller (admitted *pro hac vice*)
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
thomas.mueller@wilmerhale.com

Chris Johnstone (Bar no. 242152)
950 Page Mill Road
Palo Alto, California 94304
Telephone: (650) 858-6000
Facsimile: (650) 858-6100

*Counsel for Defendant Elna Co., Ltd. And
Elna America, Inc.*

1 **MINTZ, LEVIN, COHN, FERRIS,**
2 **GLOVSKY AND POPEO, P.C.**

3 s/ Evan S. Nadel

4 Evan S. Nadel
44 Montgomery Street, 36th Floor
San Francisco, California 94104
5 Telephone: (415) 432-6000
Facsimile: (415) 432-6001
6 enadel@mintz.com

7 Bruce D. Sokler (admitted *pro hac vice*)
8 Robert G. Kidwell (admitted *pro hac vice*)
701 Pennsylvania Avenue, N.W., Suite 900
9 Washington, D.C. 20004
Telephone: (202) 434-7300
10 Facsimile: (202) 434-7400
bdsokler@mintz.com
11 rgkidwell@mintz.com

12 *Counsel for Defendant AVX Corporation*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SHEARMAN AND STERLING LLP

s/ Djordje Petkoski

Djordje Petkoski (admitted *pro hac vice*)
David A. Higbee (admitted *pro hac vice*)
Ryan Shores (admitted *pro hac vice*)
Todd M. Stenerson (admitted *pro hac vice*)
Deke Shearon (admitted *pro hac vice*)
401 9th Street, N.W.
Washington, D.C. 20004
Telephone: (202) 508-8000
Facsimile: (202) 508-8100
djordje.petkoski@shearman.com
david.higbee@shearman.com
ryan.shhores@shearman.com
todd.stenerson@shearman.com
deke.shearon@shearman.com

John Cove (Bar No. 212213)
535 Mission Street, 25th Floor
San Francisco, California 94105
Telephone: (415) 616-1139
Facsimile: (415) 616-1199
john.cove@shearman.com

*Counsel for Defendant Rubycon
Corporation and Rubycon America Inc.*

BONA LAW PC

s/ Jarod M. Bona

Jarod M. Bona

Aaron R. Gott

4275 Executive Square, Suite 200

La Jolla, California 92037

jarod.bona@bonalawpc.com

aaron.gott@bonalawpc.com

*Counsel for Defendants Taitso Corporation and
Taitso America, Inc.*

DENTONS US LLP

s/ Gaspare J. Bono

Gaspare J. Bono

Claire M. Maddox

Leslie A. Barry

1900 K Street, N.W.

Washington, D.C. 20006

gap.bono@dentons.com

claire.maddox@dentons.com

leslie.barry@dentons.com

Andrew S. Azarmi

One Market Plaza

Spear Tower, 24th Floor

San Francisco, California 94105

andrew.azarmi@dentons.com

*Counsel for Defendants Shinyei Kaisha,
Shinyei Technology Co., Ltd., Shinyei
Capacitor Co., Ltd. and Shinyei
Corporation of America, Inc.*

1 **BAKER & HOSTETLER LLP**

2 /s/ C. Dennis Loomis

3 C. Dennis Loomis (Bar No. 82359)

4 11601 Wilshire Blvd., Suite 1400

5 Los Angeles, California 90025-0509

6 Telephone: 310. 820.8800

7 Facsimile: 310.820.8859

8 cdloomis@bakerlaw.com

9 John R. Fornaciari (admitted pro hac vice)

10 Danyll W. Foix (admitted pro hac vice)

11 1050 Connecticut Ave. N.W., Suite 1100

12 Washington, D.C. 20036

13 Telephone: 202.861.1500

14 Facsimile: 202.861.1783

15 jfornaciari@bakerlaw.com

16 dfoix@bakerlaw.com

17 *Counsel for Defendants Soshin Electric Co., Ltd.*

18 *and Soshin Electronics of America Inc.*

19 **ATTESTATION STATEMENT**

20 Pursuant to Civil L.R. 5-1(i)(3), I attest that all other signatures listed, and on whose behalf
21 the filing is submitted, concur in the filing's content and have authorized the filing.

22 Dated: June 19, 2020

23 /s/ Robert W. Turken

24 Robert W. Turken (*pro hac vice*)

25 **BILZIN SUMBERG BAENA PRICE**
26 **& AXELROD LLP**

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/s/ Robert W. Turken

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